

May 22, 2006

By Facsimile

Commission Secretary &  
Rosemary C. Smith, Esquire  
Associate General Counsel  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

Re: Comments of the National Republican Senatorial Committee and National  
Republican Congressional Committee on Advisory Opinion Request 2006-19

Dear Ms. Smith:

The National Republican Senatorial Committee ("NRSC") and National Republican Congressional Committee ("NRCC"), through counsel, submit these comments regarding the advisory opinion request by the Los Angeles Democratic Party Central Committee ("Committee") seeking guidance concerning whether certain proposed mailings and phone scripts constitute "federal election activities" under the Federal Election Campaign Act of 1971, as amended ("FECA"), and Federal Election Commission ("Commission") regulations. See AOR 2006-19. For the reasons set forth below, the Commission should conclude that the proposed phone scripts and mailings do not constitute get-out-the-vote ("GOTV") activities under the definition of "federal election activities" at 11 C.F.R. § 100.24(a)(3). Rather, the proposed activities fall within the exceptions to "federal election activities" under 11 C.F.R. § 100.24(c).

Commission regulations define GOTV activity as "contacting registered voters by telephone, in person, or by other individualized means, to assist them in engaging in the act of voting." 11 C.F.R. § 100.24(a)(3) (emphasis added). The phone scripts and direct mail pieces at issue in draft of Advisory Opinion 2006-19 merely identify the local candidates endorsed by the Committee and list the date of the election. The proposed communications do not provide any information that will assist the recipients in the act of voting. See 11 C.F.R. § 100.24(a)(3). For example, they do not include information concerning when the polling places are open or the location of any particular polling places. See *id.* § 100.24(a)(3)(i). In addition, they do not offer to transport any voters to the polling places. See *id.* § 100.24(a)(3)(ii). Accordingly, the communications do not contain any of the information required by Commission regulations to qualify as GOTV activity under the definition of federal election activities.

The Committee's proposed communications appear to fall under the exception to the definition of "federal election activities" at Section 100.24(c)(1). The communications refer

solely to one or more local candidates and do not promote, attack, support or oppose any candidates for federal office. *See id.* These communications appear to be advocacy pieces promoting local candidates. Simply including the date of the election, with nothing more, should not convert these local candidate advocacy pieces into federal GOTV communications under Commission regulations.

The Commission's Explanation and Justification supporting the definition of GOTV communications supports the conclusion that the Committee's communications do not constitute federal election activities. 67 Fed. Reg. 49064, 49067 (2002).

Second, GOTV has a very particular purpose: assisting registered voters to take any and all necessary steps to get to the polls and cast their ballots, or to vote by absentee ballot or other means provided by law. The Commission understands this purpose to be narrower and more specific than the broader purposes of generally increasing public support for a candidate or decreasing public support for an opposing candidate.

*Id.* (emphasis added). Accordingly, simply listing the date of the election should not convert a state or local candidate advocacy piece by a local party into federal GOTV activities.

The NRSC and NRCC submit these comments to ensure that the principles of federalism are preserved under the campaign finance laws regulating the activities of state and local party committees. State and local party committees play an important role in our electoral system by engaging in grassroots activities that benefit candidates for all levels of government, federal, state and local. The Commission should interpret the application of FECA and its regulations to the state and local election activities of party committees using common sense principles. In doing so, the Commission will provide state and local party committees with a better road map for complying with the complicated, and often counter-intuitive, rules that apply to the grassroots activities of these committees. State and local party committees need clear notice concerning which activities fall within the definition of "federal election activities" and those that constitute state and local election activities. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 77 (1976) ("In an effort to be all-inclusive, however, the provision raises serious problems of vagueness, particularly treacherous where, as here, the violation of its terms carries criminal penalties and fear of incurring these sanctions may deter those who seek to exercise protected First Amendment rights.").

For all the foregoing reasons, the Commission should hold that the communications at issue in AOR 2006-19 do not constitute federal GOTV and instead fall within the exceptions to the definition of federal election activities under 11 C.F.R. § 100.24(c)(1).

Respectfully submitted,

*/s/ William J. McGinley*

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